

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

PORT OF TACOMA; SSA
TERMINALS LLC; and SSA
TERMINALS (TACOMA) LLC,

Defendant.

CASE NO. 3:17-cv-5016 BHS

ORDER

This matter is before the Court on defendants Port of Tacoma, SSA Terminals LLC and SSA Terminals (Tacoma) LLC's motion to stay, Dkt. 426. In the interest of brevity, the Court will not repeat the factual background of this dispute but instead incorporates by reference its overview in its Order granting summary judgment, Dkt. 304.

Defendants filed a petition for certiorari from the Ninth Circuit's decision in this case. *See* Dkt. 426 at 1. They seek review of whether the Clean Water Act (CWA) Section 505 authorizes citizen plaintiffs to enforce conditions of state-issued pollutant-discharge permits that mandate a scope of coverage greater than that required by the CWA. Defendants contend that this is a threshold issue that could eliminate the need for

1 this Court to resolve Puget Soundkeeper Alliance (Soundkeeper)’s claims regarding
2 stormwater discharges. They argue that if the Supreme Court rules in their favor, it will
3 result in outright dismissal. Accordingly, defendants seek an order that stays proceedings
4 pending the Supreme Court’s decision on their certiorari petition in January 2025.

5 Soundkeeper opposes a stay. Dkt. 428. It argues that Defendants’ petition will not
6 affect its claims related to the wharf because “Defendants already conceded that, if
7 Ecology regulates the Wharf pursuant to its ‘residual designation authority’ under 33
8 U.S.C. § 1342(p)(2)(E), such regulation is within the ‘scope’ of the federal Clean Water
9 Act and therefore enforceable in this suit.” *Id.* at 3. It argues the petition also cannot
10 impact its other water quality standards violation claims, and that a stay will only
11 unnecessarily delay the outcome of the case. It also argues that it will suffer prejudice if it
12 is not able to conduct discovery during the “current rainy season” to advance its claims.
13 *Id.* at 7.

14 Courts apply a three-part test first to determine whether to grant a stay. *Lockyer v.*
15 *Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005). Courts weigh the (1) possible damage
16 which may result from the granting of the stay; (2) hardship or inequity which a party
17 may suffer in being required to go forward; and (3) the orderly course of justice measured
18 in terms of simplifying or complicating of issues, proof and questions of law which could
19 be expected to result from a stay. *Id.*

20 The factors weigh in favor of a stay here. Damage that may result from a stay
21 (factor 1) for merely three months is minimal and manageable. Soundkeeper was able to
22 wait three years between this Court’s final judgment and the Ninth Circuit’s decision on

1 appeal, and it will not have to wait long to see whether its prediction that Defendants’
2 petition is “futile” comes true. *See Murguia v. Langdon*, No. 1:19-cv-00942-ADA-BAM,
3 2023 WL 6308325 (E.D. Cal. Sept. 28, 2023) (“After the nearly two-year delay between
4 the district court’s order and the issuance of the Ninth Circuit’s mandate, a brief delay
5 pending resolution of the petition for certiorari will not make a greater difference in
6 witness’ memories or the loss of evidence”). Furthermore, Defendants argue persuasively
7 that SSA continues to manage and collect data on pollution at the port. Dkt. 430 at 2.
8 Although the Court is sympathetic to the frustrations that a stay poses to discovery, those
9 harms are vague and negligible on this record.

10 Conversely, proceeding with this case if the Supreme Court grants Defendants’
11 petition could complicate the action and waste the parties’ and judicial resources.

12 Although the “hardship” to defendants would suffer in being required to go forward
13 (factor 2) with discovery and motions practice is manageable, it is needless given the
14 brevity of the requested stay.

15 The third factor – the orderly course of justice measured in terms of the
16 simplifying or complicating of issues – similarly weighs in favor of a stay. Awaiting a
17 determination on the petition will clarify the issues and questions of law for this litigation
18 relative to citizen plaintiffs’ powers under CWA section 505. Defendants argue
19 persuasively that moving ahead with the “non-wharf” portion of PSA’s claims against
20 SSA while the “wharf” claims go to the Supreme Court, would effectively bifurcate the
21 case. It is unnecessary at this juncture to determine whether Defendants are correct that
22 ‘residual designation authority’ under 33 U.S.C. § 1342(p)(2)(E) is not fatal to their

1 petition. Dkt. 430 at 5. That question is not properly briefed and not determinative of
2 whether a stay is warranted. The Court is satisfied that a stay until the parties hear about a
3 ruling on Defendants' petition has the potential to clarify and streamline the issues in this
4 case with minimal hardship.

5 **I. ORDER**

6 Therefore, it is hereby **ORDERED** that Defendants' motion to stay, Dkt. 426, is
7 **GRANTED**. The parties are directed to notify the Court within ten days of the Supreme
8 Court's decision on the petition for certiorari.

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10 Dated this 15th day of November, 2024.

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BENJAMIN H. SETTLE
United States District Judge